

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

NORTHWEST HOME DESIGNING, INC., a
Washington Corporation,

Plaintiff,

v.

LEXAR HOMES, LLC, a Washington Limited
Liability Company, ROBERT HOLLIS, an
individual, and JAMES MOEN, an individual,

Defendant.

CASE NO. 2:17-CV-00324-JLR

STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER

STIPULATION

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged:

- 4 • Documents containing personal, financial, customer data, proprietary or other
5 information subject to a right of privacy.

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential material (as
8 defined above), but also (1) any information copied or extracted from confidential material; (2)
9 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
10 conversations, or presentations by parties or their counsel that might reveal confidential material.
11 However, the protections conferred by this agreement do not cover information that is in the
12 public domain or becomes part of the public domain through trial or otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
15 or produced by another party or by a non-party in connection with this case only for prosecuting,
16 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
17 the categories of persons and under the conditions described in this agreement. Confidential
18 material must be stored and maintained by a receiving party at a location and in a secure manner
19 that ensures that access is limited to the persons authorized under this agreement.

20 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the designating party, a receiving party may
22 disclose any confidential material only to:

23 (a) the receiving party's counsel of record in this action, as well as
24 employees of counsel to whom it is reasonably necessary to disclose the information for
25 this litigation;

26 (b) the officers, directors, and employees (including in house counsel)
27 of the receiving party to whom disclosure is reasonably necessary for this litigation,

1 unless the parties agree that a particular document or material produced is for Attorney's
2 Eyes Only and is so designated;

3 (c) experts and consultants to whom disclosure is reasonably
4 necessary for this litigation and who have signed the "Acknowledgment and Agreement
5 to Be Bound" (*Exhibit A*);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the
8 duplication of confidential material, provided that counsel for the party retaining the copy
9 or imaging service instructs the service not to disclose any confidential material to third
10 parties and to immediately return all originals and copies of any confidential material;

11 (f) during their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who have signed the "Acknowledgment and
13 Agreement to Be Bound" (*Exhibit A*), unless otherwise agreed by the designating party
14 or ordered by the court. Pages of transcribed deposition testimony or exhibits to
15 depositions that reveal confidential material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this agreement;

17 (g) the author or recipient of a document containing the information or
18 a custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or discussing or
20 referencing such material in court filings, the filing party shall confer with the designating party
21 to determine whether the designating party will remove the confidential designation, whether the
22 document can be redacted, or whether a motion to seal or stipulation and proposed order is
23 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
24 standards that will be applied when a party seeks permission from the court to file material under
25 seal.
26
27

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary
12 expenses and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated
14 for protection do not qualify for protection, the designating party must promptly notify all other
15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
17 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must
19 be clearly so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic
21 documents and deposition exhibits, but excluding transcripts of depositions or other
22 pretrial or trial proceedings), the designating party must affix the word
23 "CONFIDENTIAL" to each page that contains confidential material. If only a portion or
24 portions of the material on a page qualifies for protection, the producing party also must
25 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
26 margins).

1 (b) Testimony given in deposition or in other pretrial proceedings: the
 2 parties and any participating non-parties must identify on the record, during the
 3 deposition or other pretrial proceeding, all protected testimony, without prejudice to their
 4 right to so designate other testimony after reviewing the transcript. Any party or non-
 5 party may, within fifteen days after receiving the transcript of the deposition or other
 6 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
 7 confidential. If a party or non-party desires to protect confidential information at trial,
 8 the issue should be addressed during the pre-trial conference.

9 (c) Other tangible items: the producing party must affix in a prominent
 10 place on the exterior of the container or containers in which the information or item is
 11 stored the word "CONFIDENTIAL." If only a portion or portions of the information or
 12 item warrant protection, the producing party, to the extent practicable, shall identify the
 13 protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 15 designate qualified information or items does not, standing alone, waive the designating party's
 16 right to secure protection under this agreement for such material. Upon timely correction of a
 17 designation, the receiving party must make reasonable efforts to ensure that the material is
 18 treated in accordance with the provisions of this agreement.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 21 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 25 original designation is disclosed.

26 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 27 regarding confidential designations without court involvement. Any motion regarding

confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
8 Agreement to Be Bound" that is attached hereto as *Exhibit A*.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. The parties
16 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain confidential material.

26 The confidentiality obligations imposed by this agreement shall remain in effect until a
27 designating party agrees otherwise in writing or if a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 DATED: February 23, 2018.

4 KARR TUTTLE CAMPBELL

COATS & BENNETT, PLLC

6 /s/Nathan T. Paine

Nathan T. Paine, WSBA #34487

7 701 Fifth Avenue, Suite 3300

Seattle, WA 98104

8 Email: npaine@karrtuttle.com

Attorneys for Defendants Lexar Homes, LLC,

9 Robert Hollis and James Moen

/s/David E. Bennett

David E. Bennett, NC State Bar No. 12,864

Anthony J. Biller, NC State Bar No. 24,117

1400 Crescent Green, Suite 300

Cary, NC 27518

Email: abiller@coatsandbennett.com;

dbennett@coatsandbennett.com

Attorneys for Northwest Home Designing Inc.

11 FOSTER PEPPER, PLLC
12

13 /s/ Lauren J. King

Lauren J. King, WSBA # 40939

14 1111 Third Avenue, Suite 3000

Seattle, WA 98101

15 Email: kingl@foster.com

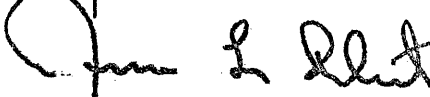
16 Attorneys for Northwest Home Designing Inc.

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 23rd day of February, 2018.



JAMES L. ROBART
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Northwest Home Designing, Inc. v. Lexar Homes, LLC, et al.*, No. 2:17-cv-00324-JLR. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____